

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ENRICO LEVY,)
vs.)
Plaintiff,)
vs.)
WARDEN EVANS, ILLINOIS)
DEPARTMENT OF CORRECTIONS and)
ROGER E. WALKER, JR.,)
Defendants.)
CIVIL NO. 06-723-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff, an inmate in the Pinckneyville Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

(a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for Dismissal.— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action is subject to summary dismissal.

Plaintiff states that when he arrived in Pinckneyville, he filed a grievance over the unsanitary nature of his cell, but he got no satisfactory response to his grievance. Several weeks later, Plaintiff awoke with a fever, chest pains, coughing, and burning sensations in his lungs and eyes. He was taken to the medical unit, where he remained for four days. He claims that his cell mate also developed similar symptoms, as did Plaintiff's new cell mate after Plaintiff was discharged from the hospital. Plaintiff believes that he became ill due to the unsanitary nature of his cell, and that Defendants are liable because they would not provide him with appropriate cleaning and disinfecting materials upon request.

In a case involving conditions of confinement in a prison, two elements are required to establish violations of the Eighth Amendment's cruel and unusual punishments clause. First, an objective element requires a showing that the conditions deny the inmate "the minimal civilized measure of life's necessities," creating an excessive risk to the inmate's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The second requirement is a subjective element – establishing a defendant's culpable state of mind. *Id.*

In this action, Plaintiff makes no specific allegation against either of the individually-named Defendants, and "[a] plaintiff cannot state a claim against a defendant [merely] by including the defendant's name in the caption." *Collins v. Kibort*, 143 F.3d 331, 334 (7th Cir. 1998). Therefore, he has failed to state a claim against either Evans or Walker.

As for the Illinois Department of Corrections, the Supreme Court has held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). *See also Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001) (Eleventh Amendment bars suits against states in federal court for money damages); *Billman v. Indiana Department of Corrections*, 56 F.3d 785, 788 (7th Cir. 1995) (state Department

of Corrections is immune from suit by virtue of Eleventh Amendment); *Hughes v. Joliet Correctional Center*, 931 F.2d 425, 427 (7th Cir. 1991) (same); *Santiago v. Lane*, 894 F.2d 218, 220 n. 3 (7th Cir. 1990) (same). Accordingly, Plaintiff has failed to state a claim against the I.D.O.C..

In summary, Plaintiff's complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** with prejudice. Plaintiff is advised that the dismissal of this action will count as one of his three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated: August 17, 2007.

s/ J. Phil Gilbert
U. S. District Judge